

153 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Westar Energy, Inc.
Southwest Power Pool, Inc.

Docket Nos. ER14-2852-001
ER15-1737-000
(not consolidated)

ORDER ON COMPLIANCE FILING

(Issued November 4, 2015)

1. On May 14, 2015, in response to the Commission's March 19, 2015 order,¹ Westar Energy, Inc. (Westar) submitted proposed revisions to its transmission formula rate protocols under Westar's Open Access Transmission Tariff (Westar Tariff). Also, on May 18, 2015, in response to the March 2015 Order, Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its Open Access Transmission Tariff (SPP Tariff), incorporating the changes proposed in the Westar Compliance Filing. In this order, we conditionally accept Westar's compliance filing, effective March 1, 2015, as requested, subject to a further compliance filing.

I. Background

2. In the July 2014 Order, the Commission explained that it had undertaken a review of the transmission formula rates and formula rate protocols of jurisdictional public utilities to identify utilities that currently are not required to make annual informational filings of their formula rate updates with the Commission.² Westar was one such utility

¹ *Westar Energy, Inc.*, 150 FERC ¶ 61,203 (2015) (March 2015 Order). As explained in the July 17, 2014 order, *Westar Energy, Inc.*, 148 FERC ¶ 61,033, at n.2 (2014) (July 2014 Order), while Westar's formula rate protocols are included in the Westar Tariff, Westar's formula rate and formula rate protocols are also included as part of SPP's Tariff. Revisions to the Westar formula rate and formula rate protocols in SPP's Tariff are filed by SPP on Westar's behalf.

² July 2014 Order, 148 FERC ¶ 61,033 at P 7.

and the Commission analyzed the Westar formula rate in the Westar Tariff and the SPP Tariff using the standards established in the MISO Investigation Order³ and MISO Compliance Order⁴ to determine if it meets the other requirements established in those orders. The Commission found that Westar's proposed formula rate protocols did not conform to the requirements of the MISO Investigation Order and the MISO Compliance Order, which specifically identified three areas of concern: (1) scope of participation (i.e., who can participate in the information exchange); (2) the transparency of the information exchange (i.e., what information is exchanged); and (3) the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange (i.e., how the parties may resolve their potential disputes). The Commission therefore directed Westar to propose formula rate protocols addressing all three areas of concern.⁵

3. On September 11, 2014, in compliance with the Commission's July 2014 Order, Westar submitted revised formula rate protocols. On March 19, 2015, the Commission found that Westar's revisions to the definition of interested parties provided sufficient scope of participation for its protocols. However, the Commission found that Westar's revisions in its proposed protocols related to transparency and the challenge procedures did not fully comply with the requirements of the July 2014 Order and directed Westar to submit a further compliance filing.

4. On May 14, 2015, Westar filed revisions to the Westar Tariff in order to comply with the Commission's March 2015 Order. On May 18, 2015, SPP filed revisions to the SPP Tariff to incorporate Westar's proposed changes.

II. Notice of Filing and Responsive Pleadings

5. Notice of Westar's compliance filing was published in the *Federal Register*, 80 Fed. Reg. 29,319 (2015), with interventions and protests due on or before June 4, 2015.

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *reh'g denied*, 146 FERC ¶ 61,209 (2014).

⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order). The Commission also separately evaluated the compliance filings of two MISO transmission owners. *See Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,210 (2014) (evaluating the compliance filing of Southern Indiana Electric & Gas Company); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,211 (2014) (evaluating the compliance filing of Northern Indiana Public Service Company).

⁵ July 2014 Order, 148 FERC ¶ 61,033 at P 7.

Kansas Electric Power Cooperative, Inc. (KEPCo) filed a timely motion to intervene and protest. On June 12, 2015, Westar filed an answer to KEPCo's protest.

6. Notice of SPP's Compliance Filing was published in the *Federal Register*, 80 Fed. Reg. 30,223 (2015), with interventions and protests due on or before June 8, 2015. The Missouri Public Service Commission filed a notice of intervention. KEPCo filed a timely motion to intervene and protest.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the Missouri Public Service Commission's notice of intervention and KEPCo's timely, unopposed motions to intervene serve to make them parties to the proceedings in which they were filed.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Westar's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Westar's Compliance Filing

a. Transparency

i. March 2015 Order

9. In the March 2015 Order, the Commission directed Westar to modify its formula rate protocols to: (1) explicitly require remote access for participation at Annual Update meetings and True-Up Adjustment meetings; (2) allow an adequate period of time for interested parties to review information following its posting and to serve reasonable information requests on Westar relevant to the implementation of the formula rate; (3) remove the phrase "included in the projected capital expenditures" from section V.1; (4) add the phrase "to the extent specified in the Formula, upon the books and records of Westar consistent with FERC accounting policies and practices" to section VI.1; (5) revise the sentence beginning with "[t]he Projected Revenue Requirement" to include additional punctuation where appropriate; and (6) and include a requirement that Westar endeavor to coordinate with other transmission owners using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism and hold joint meetings to enable all interested

parties to understand how those transmission owners are implementing their formula rates for recovering the costs of such projects.⁶

ii. Westar Filing

10. In its filing, Westar revised sections I.10 and I.11 to state that Westar shall provide remote access for Interested Parties to participate in the Annual True-Up and Annual Projected Rate meetings.

11. Westar also revised section II.1 of its protocols to allow 60 days following the annual Projection Publication Date for Interested Parties to serve information and data requests.

12. In section V.1 of its protocols, Westar removed the phrase “included in the projected capital expenditures” from the sentence.

13. In section VI.1, Westar added “to the extent specified in the Formula, upon the books and records of Westar consistent with FERC accounting principles and practices” to the sentence to be consistent with section I.8(a). Westar also added punctuation to this section to clarify the sentence beginning with “[t]he Projected Revenue Requirement.”

14. In new section I.12, Westar included language indicating that Westar shall endeavor to coordinate with other transmission owners regarding the joint meetings.

iii. KEPCo Protest

15. KEPCo argues that Westar fails to comply with the Commission’s directive in the March 2015 Order to revise the formula rate protocols to allow sufficient time for discovery. KEPCo argues that the Commission found that “[Westar’s] proposed timelines—75 days to serve information requests on the Annual True-Up and as little as 31 days to serve information requests on the Annual Projection—are not sufficiently long enough to allow parties proper review.”⁷ KEPCo argues that Westar’s compliance filing does not propose any changes to the 75-day period for requests for information on the Annual True-Up.

16. KEPCo notes that the Commission found that Westar’s extended deadline to respond to information requests from 10 to 15 business days was reasonable, “particularly in light of our finding above that Westar must provide additional time for

⁶ March 2015 Order, 150 FERC ¶ 61,203 at PP 46, 47, 50-52.

⁷ KEPCo Protest at 3 (quoting March 2015 Order, 150 FERC ¶ 61,203 at P 47).

interested parties to pursue discovery.”⁸ KEPCo argues that the link between the revised deadline and the additional time for parties to pursue discovery means that the Commission should require Westar to provide customers a commensurate extension. According to KEPCo, Westar should increase the discovery period by 50 percent in order to match the 50 percent increase in response time from 10 to 15 business days.⁹ KEPCo asserts that an adequate time period for parties to review information and serve requests regarding the Annual True-Up is at least 110 days.

iv. Westar Answer

17. Westar argues that, contrary to KEPCo’s arguments, Westar revised its formula rate protocols to extend the time following the Annual Projection Publication Date for Interested Parties to serve information and data requests from 31 days to 60 days. Westar asserts that, because Westar’s Annual Projection includes a republication of the Annual True-Up, Interested Parties will actually have 135 days to serve information and data requests regarding the Annual True-Up. To clarify this point, Westar proposes to revise section II.1 of the protocols to indicate that “Interested Parties shall have 75 days following the Annual True-Up Meeting . . . and 60 days following the annual Projection Publication Date . . . to serve reasonable information and document requests on Westar related to *the Annual True-Up and the Annual Projection*.” Finally, Westar argues that KEPCo’s mechanical approach to establishing the time period within which to serve information and data requests is not practical.

v. Commission Determination

18. We find that Westar’s revisions in its proposed protocols related to transparency generally comply with the requirements of the March 2015 Order and will therefore accept these proposed revisions subject to the modification ordered below. We find that Westar’s revised deadline is reasonable, particularly in light of Westar’s clarification that Interested Parties shall have 75 days following the Annual True-Up Meeting and 60 days following the annual Projection Publication Date to serve reasonable information and document requests on Westar related to *the Annual True-Up and the Annual Projection*. We direct Westar to include this clarification in a compliance filing due within 60 days of the date of this order. Further, we direct Westar to take all necessary steps to have SPP make a parallel compliance filing to incorporate the same revision to the Westar protocols in the SPP Tariff.

⁸ *Id.* (quoting March 2015 Order, 150 FERC ¶ 61,203 at P 48).

⁹ *Id.* at 4.

19. As discussed above, the Commission required Westar to revise its protocols to include language that provides for joint meetings on regional transmission projects. Westar's proposed section I.12 reads:

Each year Westar shall endeavor to coordinate with other Transmission Owners in the SPP using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism and hold a joint informational meeting to enable all Interested Parties to understand how those transmission owners are implementing their formula rates for recovering the costs of such projects.

20. We find that Westar's proposed language does not comply with the Commission's directives because it appears to limit coordination to only other transmission owners that are members of the same planning region, in this case SPP. We find that this language does not require transmission owners that own inter-regional projects whose costs are allocated in part to SPP members to also participate in the joint meetings when establishing the revenue requirements for transmission projects. Therefore, we will direct Westar to revise section I.12 in order to not limit the coordination in the joint meetings to only the transmission owners that are members of SPP.

b. Challenge Procedures

i. March 2015 Order

21. The Commission also directed Westar to revise its protocols to: (1) state in section III.7 that "a party may not pursue a Formal Challenge if that party did not submit *any* Informal Challenge during the applicable Review Period"; (2) reinsert "[n]othing in these [p]rotocols should or may be construed as preventing a customer, the [Kansas Commission], or the [Commission] from protesting such correction as inappropriate" in section IV.2; and (3) replace "a customer, the [Kansas Corporation Commission]," with "Interested Parties" in section IV.2 to be consistent with the rest of the protocols.¹⁰

ii. Westar Filing

22. In its filing, Westar revised section III.3(a)(viii) to provide that an Interested Party's Formal Challenge state whether the filing party utilized the Informal Challenge procedures in the protocols with regard to any issue.

¹⁰ March 2015 Order, 150 FERC ¶ 61,203 at PP 75, 77.

23. Westar also corrected section III.7 to state that “a party may not pursue a Formal Challenge if that party did not submit *any* Informal Challenge during the applicable Review Period.”

24. Westar revised section IV.2 to clarify that nothing in the protocols should or may be construed as preventing Interested Parties or the Commission from protesting as inappropriate any correction made by Westar according to section IV.2 of the protocols.

iii. Commission Determination

25. We find that Westar’s revisions in its proposed protocols related to challenge procedures generally comply with the requirements of the March 2015 Order and will therefore accept these proposed revisions with no further modifications.

2. SPP’s Compliance Filing

a. March 2015 Order Requirements

26. In the March 2015 Order, the Commission noted that Westar stated that, although Westar filed its proposed protocols in its own tariff, SPP had not made a filing incorporating Westar’s proposed protocols into the SPP Tariff. Consequently, the Commission directed Westar to take all necessary steps to have SPP make a parallel filing making the same protocol revisions to the Westar protocols in the SPP Tariff.¹¹

b. SPP Compliance Filing

27. SPP proposes to incorporate Westar’s revised protocols into Addendum 3 Part 2 to Attachment H of the SPP Tariff. SPP states that the modifications proposed for SPP’s Tariff are substantively identical to the modification proposed in the Westar Compliance Filing.¹² In addition, SPP proposes to delete obsolete language in Section II.1 in Attachment H of the SPP Tariff.

¹¹ *Id.* PP 11, 42, 71.

¹² SPP Transmittal at 2-3.

c. Commission Determination

28. We find that SPP has appropriately incorporated protocols included in the Westar Compliance Filing. Because the protocols submitted by SPP are identical to those submitted by Westar, we will conditionally accept Westar's protocols as submitted by SPP, subject to SPP making a compliance filing with further revisions corresponding to the further revisions required of Westar above. Therefore, we will direct SPP to submit a compliance filing within 60 days of this order, which reflects any changes made by Westar as a result of the directive to Westar above.

The Commission orders:

(A) Westar's compliance filing is hereby conditionally accepted, effective March 1, 2015, as requested, as discussed in the body of this order.

(B) Westar is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

(C) SPP's Compliance Filing is hereby conditionally accepted, effective March 1, 2015, as requested, as discussed in the body of this order.

(D) SPP is hereby directed to submit a further compliance filing within 60 days of the date of this order, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.